

**JUDGMENT
OF THE CONSTITUTIONAL REVIEW CHAMBER
OF THE SUPREME COURT
of 18 September 1995**

Review of the petition of the Tallinn Administrative Court for the declaration of invalidity of the requirement established in § 21(1) of the Aliens Act.

The Constitutional Review Chamber sitting in a panel presided over by the Chairman of the Chamber Rait Maruste and composed of members of the Chamber, justices Tõnu Anton, Lea Kalm, Jaano Odar and Jüri Pöld, at its session of 13 September 1995, with the representative of the Riigikogu, deputy chairman of the Riigikogu Standing Constitutional Committee Jaan Pöör and the Deputy Chancellor of Justice-Adviser Aare Reenumäe appearing and in the presence of the secretary to the Chamber Kerdi Raud, reviewed the petition, arising from the judgment of the Tallinn Administrative Court of 21 May 1995, for the declaration of invalidity of the requirement stipulated in § 21(1) of the Aliens Act.

From the documents submitted to the Constitutional Review Chamber **it appears, that:**

The Tallinn Administrative Court heard Fljura Urazmetova's complaint against the Citizenship and Migration Board, the Tallinn City Government, and the Employment and Migration Committee of the Tallinn City Council. The Committee refused to register F. Urazmetova's a permanent address with her spouse in a hostel. The Citizenship and Migration Board refused to accept her application for residence permit in Estonia. The refusal was based on the Tallinn City Council resolutions of 30 January 1990 and 14 March 1990 which terminated permanent address registration in hostels, and on the Immigration Act, which authorised the local governments to decide the issues pertaining to permanent address registration within established migration quota. The Citizenship and Migration Board substantiated the refusal to accept the application for permanent residence permit with the fact that as F. Urazmetova did not have a permanent address registration in Estonian SSR before 1 July 1990, she had to apply for a residence permit through an Estonian foreign mission. F. Urazmetova requested that the Tallinn Administrative Court declare the procedures of the Tallinn City Government, the Tallinn City Council Committee and the Citizenship and Migration Board to be in conflict with §§ 12, 17 and 23 of the International Covenant on Civil and Political Rights, with §§ 10 and 11 of the International Covenant on Economic, Social and Cultural Rights, and with §§ 9, 10, 11, 27, 29 and 34 of the Constitution.

In its judgment of 15 May 1995 the Tallinn Administrative Court declared unlawful the procedures of the Tallinn City Government and the Tallinn City Council - the refusal to register F. Urazmetova's permanent address, and the refusal of the Citizenship and Migration Board to accept the application. The court was of the opinion, however, that the requirement of permanent address registration in Estonian SSR established in § 21(1) of the Aliens Act should not be applied to F. Urazmetova. The administrative court decided that the requirement of permanent address registration in the Estonian SSR before 1 July 1990, established in § 21(1) of the Aliens Act, was in conflict with § 11 of the Constitution. The latter establishes that rights and freedoms may be restricted only in accordance with the Constitution and such restrictions must be necessary in a democratic society, and shall not distort the nature of the rights and freedoms that are restricted. The administrative court was of the opinion that F. Urazmetova can not apply for permanent address registration in her spouse's dwelling, because there is no Act regulating registration of residents. At the same time, her constitutional rights to a dwelling, work and family can be guaranteed only on the basis of a permanent address registration.

The representative of the Riigikogu was of the opinion that § 21(1) of the Aliens Act was not in conflict with § 11 of the Constitution. The representative of the Chancellor of Justice held that § 21(1) was not in conflict with § 11 of the Constitution and there was no relation between § 21(1) of the Aliens Act and § 11 of the Constitution. It follows from the written opinion of the Minister of Justice that § 21(1) of the Aliens Act was not applicable in F. Urazmetova's administrative matter, it is not a relevant provision, and therefore the petition in the judgment of the administrative court should be dismissed.

Having examined the documents submitted and having given a fair hearing to the representatives of the Riigikogu and the Chancellor of Justice, the Constitutional Review Chamber found, that:

On the basis of § 4(3) of the Constitutional Review Court Procedure Act the Supreme Court shall review constitutionality of a matter only to the extent set forth in a petition. The judgment of the administrative court contains a request that the Supreme Court declare the requirement established by § 21(1) of the Aliens Act invalid, as it is in conflict with § 11 of the Constitution.

§ 21 of the Aliens Act regulates how the foreigners who had settled in Estonia before 1 July 1990 must apply for residence and work permits. § 21(1) of the Act establishes the following: "An alien who has settled in Estonia before 1 July 1990 and is still residing here, who has a permanent address registration in the former Estonian SSR but who has no residence and work permit for legal stay in Estonia, is obliged to apply for these permits pursuant to the procedure established by the Government of the Republic, within two years beginning from the date this Act becomes effective." The procedure was established by the Government of the Republic Regulation no. 288 of 21 September 1993. On the basis of clause 6 of the "Rules of Issue and Extension of Residence and Work Permits to Aliens" (in the wording in force from 7 June 1994) an alien shall apply for residence and work permits through the foreign missions of the Republic of Estonia. An alien who resides in Estonia on the basis of permanent address registration in the Estonian SSR can apply for residence and work permits at the Citizenship and Migration Board. The Tallinn Administrative Court, in its judgment, declared unconstitutional the requirement stipulated in § 21(1) of the Aliens Act, which establishes that an alien who has a permanent address registration in the former Estonian SSR, and who has no residence and work permit for legal stay in Estonia, may apply for these permits at the Citizenship and Migration Board.

According to § 11 of the Constitution rights and freedoms may be restricted only in accordance with the Constitution. Such restrictions must be necessary in a democratic society, and shall not distort the nature of the rights and freedoms restricted. The conclusion reached by the Tallinn Administrative Court that the requirement that an alien who has a permanent address registration in the Estonian SSR may apply for these permits at the Citizenship and Migration Board, constitutes an unconstitutional restriction of rights and freedoms that is not necessary in a democratic society, and distorts the nature of the rights and freedoms restricted, is groundless. The provisions of § 21(1) of the Aliens Act do not preclude the possibility that the procedure established by the Government of the Republic may give those aliens, who have permanent address registration in the former Estonian SSR, the opportunity to apply for residence and work permits at the Citizenship and Migration Board. This provision does not restrict rights or freedoms and therefore there is no essential relation between § 21(1) of the Aliens Act and § 11 of the Constitution. The fact that § 21(1) of the Aliens Act authorises the Government of the Republic to establish the procedures for applying for residence and work permits is not in conflict with § 11 of the Constitution, because the object of regulation of the latter is different.

On the basis of the aforesaid and pursuant to § 19(1)1) of the Constitutional Review Court Procedure act, **the Constitutional Review Chamber has decided:**

To dismiss the petition included in the judgment of the Tallinn Administrative Court to declare invalid the requirement established in § 21(1) of Aliens Act.

The judgment is effective as of pronouncement, is final and is not subject to further appeal.

Rait Maruste
Chief Justice of the Supreme Court